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Apology in behalf
of the Smugglers 1749

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A FREE
A P O L O G Y
In BEHALF of the
S M U G G L E R S.



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A F R E E
A P O L O G Y

K In BEHALF of the
S M U G G L E R S,

So far as their CASE affects the
C O N S T I T U T I O N.

*By an Enemy to all Oppression, whether by
Tyranny, or Law.*

*“ Laws, justly made for the Preservation of the
“ Commonwealth, without extreme Punishment,
“ are more often obey’d and kept, than Laws
“ and Statutes made with great and extreme
“ Punishments.”*

Preamble of the Statute of 1 MAR.



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M D C C X L I X.

A. E. H. E. E.

APOLLO

THE MUSEUM

COMMISSION



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A

FREE APOLOGY, &c.



TYRANTS, wicked Ministers, Conspirators, Inquisitors, nay Devils themselves, have had their several Apologists; and is a poor *Smuggler* a greater Monster than all these? The Cry is up against him; severe Laws proscribe him; revengeful Prosecutions bring him to the fatal Tree. Little Armies are sent to awe him, and no one, as yet, has had Courage, or Public Spirit enough to enquire into the probable Consequences of such alarming Extremities: But People run on wildly talking of Extirpation, without duly consi-

dering the Matter, apprehensive of nothing, imagining every thing said and done against him to be good and lawful, and tending to no Evil whatever.

Thus proscribed, thus prosecuted, thus driven to Desperation, can any one wonder at the shocking Barbarities and Cruelties we daily hear are committed by that generally detested Body of People? Severe Laws will ever be attended with severe Oppositions in the Execution of them, while *those*, agreeable to my Motto, *justly made for the Preservation of the Commonwealth, without extreme Punishment, are more often obey'd and kept, than Laws and Statutes made with great and extreme Punishments.*

But lest this Apology, by it's coming out so soon after the late *Chichester* Execution, should be misunderstood, and interpreted as an Apology for the unparallel'd Assassins, that suffered there, it may not be amiss, before I proceed any further, to declare my Abhorrence of any such Intention; as I must also beg leave
just

just to premise further, that I do not set myself up for an Apologist for *Smuggling*, but an Apologist for the present *State* and *Condition* of the *Smuggler*; and *that* only so far as I apprehend the *Manner* of pursuing him, may prove dangerous to the Constitution of my Country. Those who may take the Trouble to peruse these Pages, I flatter myself will readily do me the Justice to believe, they were dictated purely by a Principle of Liberty, and a Mixture of Compassion for those unhappy Wretches, called *Smugglers*, who seem to be tempted beyond their Power of resisting, and prosecuted beyond the Bounds of a just and equal Moderation.

There is a Saying among Lawyers, that *God and the Laws do nothing in vain*:—How far those against *Smugglers* are an Exception to it, I leave to the Reader to determine. For my Part, I must ever be of Opinion, that *Penal* Laws seldom answer the End of their enacting, and are besides very destructive of Liberty; in this contradictory of Lord Chancellor *Fortescue's* saying, that
Anglicæ

Angliæ Jura in omni Casu Libertati dant Favorem: That is, the Laws of *England* do in all Cases favour Liberty.

The great Lord *Burleigh* used to say, that *he knew not what an Act of Parliament might not do*: But, with Deference to that Statesman, as the King is said in his Realm to have two Superiors, *God* and the *Law*; so I will suppose the Constitution superior to any Act of Parliament whatever; and that, whether we see a King or a Parliament breaking in upon it, they are equally to be resisted.

That *England* can hardly be ruined unless it be by her own Parliaments, was another Maxim of the same Lord Treasurer *Burleigh*. As this Maxim plainly implies a Possibility of the Thing, it is natural to enquire by what Means that Possibility may be effected, which can be no other but by the most venal Prostitution, with an utter Contempt of all public Virtue, and wantonly multiplying our penal Laws; especially, those
which

which have a Tendency to overthrow the Constitution.

Such Laws as require an armed Force to put them in Execution are unnatural, and have more the Air of arbitrary Edicts than the voluntary Acts of a free People.

In the framing of all Laws, some Regard should be had, I imagine, to the Passions of Mankind. There are certain Species of Temptations that ought not to be thrown in their Way; and that if you do, you must expect they will fall into them; and what is more, People will be always ready, as often as they do, to justify them, by saying, it was impossible to resist them.

Love and Interest are the strongest Temptations in Nature. If a Saint were to find himself in Bed with a fine Woman, would not the Flesh think you rebel? If a round Sum of Money, by some lucky Job, came in the Way of any of the most upright Statesmen
of

of the present virtuous Age, would they not smuggle it? I beg Pardon for making Use of the ignominious Word *smuggle*: I have no Intention to introduce so odious a Term, by wishing to brand all bad Ministers with the Name of *State Smugglers*.

Upon these Principles, I think then the *Smugglers* may fairly say to the Government, what the poor Sinner says daily to his Creator in the Lord's Prayer, *Lead us not into Temptation, but deliver us from Evil*.

Were I to pen a Dying-Speech for a *Smuggler*, I should be apt to put into his Mouth something to the following Effect;

Good People,

I PRAY you to take Warning of my untimely End, to which I am *legally* brought for having purchased *Dutch* and *French* Commodities with my own ready Money, and selling them again; in the defending of which, my Property, I have frequently
hazarded

hazarded my own Life, and taken away the Lives of others, whom, in the Violence of my Rage and Revenge, I have mangled in a most barbarous and shocking Manner; for which I most humbly ask Pardon of both God and Man. I am very sensible of the monstrous Cruelty of the Thing; neither would I endeavour to extenuate my Crimes by comparing them with the greater Magnitude of other People's: Yet I cannot help saying, I think it very hard that one should be more vilify'd, more cry'd out upon, for a single Act of Cruelty on one Man, than another that shall act it on Millions. Pray, good People, is not the Nation groaning under the heaviest of Pressures? Has she not been most cruelly used for several Years last past? Is she not stab'd to the very Vitals? Are not her Wounds out of Number, from the Crown of her Head to the Sole of her Foot? Yet, have we not seen the Authors of her Miseries reaping Honours instead of Punishment? which verifies the Poet's Words, with which I chuse to take my Leave of you and the World:

B

For

*For little Villains must submit to Fate,
That great ones may enjoy the World in State.*

A very rational Inference, I think, may be here made from what has been said; namely, that a *Smuggler* may not be over satisfied he suffers *justly* because he suffers *legally*. There are doubtless many Instances, by which it might be made appear, that acting by *Law* is not always acting *justly*. *Dudley* and *Empson*, in the Beginning of King *Henry VIII*th's Reign, had *Laws* on their Side for what they had done; but they lost their Heads nevertheless for reviving and putting them in Execution; which could be for no other Reason, but because the *Laws* by which they acted were *unjust* in themselves. The Act against *Witchcraft* again, was not less an unjust Act when in Force, than it appears to be so now it is repealed.

It cannot be denied but the present *Laws* against *Smugglers* are severe, and open a wide Door for Perjuries, false and malicious Informations, and great Variety of Oppression.

After

After Information given against any one on the Act of Smuggling, for aiding and assisting in the landing and running of uncustomed Goods, his Name is published in the *Gazette*, and a Proclamation directed to be published and fixed up in two Market-Towns, near to the Place where the Offence is charged to be committed, requiring him to surrender himself in such a limited Time, or in Default whereof he becomes attainted, and convicted of Felony.

As there is so large a Reward as 500*l.* for every Person convicted upon such an Information, if excited by the Lucre of Gain, here is a strong Temptation to Perjury ; if excited by Revenge, here is a strong Temptation to gratify it. Besides, such Informations have often been exhibited at such a great Distance of Time after the Facts said to be committed, that the Persons thereby charged have been entirely defeated of making any Defence, whether Offenders or not, by Reason that it was rendered utterly impracticable to give an Account, where the Person or Per-

sons charged, was, or were at the Time, or Times when they may have been charged with such Offences. Thus it will always be in the Power of an Informer to swear away any Person's Life, unless such Person charged has the Foresight, or can afford to keep a Journal of all his Hours and Days, and have half a dozen Persons continually with him, to prove such Journal, and make Entries of it.

If it be considered likewise, that *Smugglers* consist of a Body of People the most illiterate of any in the Kingdom, being generally utter Strangers to Reading and Writing; as also that the Proclamation, instead of being entrusted to the Care of some Person of Character, is committed to inferior Officers to the Sheriff, who suppress rather than publish it. Thus circumstanced, I say it is difficult for them to comply with the Terms of the Law, if they were so inclined and had Opportunities of doing it. In this Case, where a Man suffers thro' very Ignorance, as many have done, who will not be inclin'd to think it a Hardship? Whereas, if Notice
were

were to have been left at the last, or most usual Place of Abode of the Person or Persons against whom Informations were exhibited, it would have taken away all Excuse whatever, and the Law would so far have had it's desired Effect.

It has been pretended, that several Acts of Parliament have been made to indemnify Persons guilty of Offences against the Laws of Customs and Excise; whereas in fact no such Law was ever made, but an Act of Parliament, under that specious Title, passed some Years ago, whereby all Persons guilty of Offences against such Laws, were requir'd to serve on board his Majesty's Ships of War, and were not indemnify'd upon any other Terms. It was therefore hard, upon such Conditions, to take away from their Families Thousands of Persons in good Circumstances, who would almost prefer the Gallies to such a compulsive Law.

As to the Proclamation directed by the Law against *Smugglers*, requiring them to
fur-

surrender themselves to one or other Justice of the Peace, within Forty Days after the Publication thereof in the *London Gazette*, it is well known, that the two *Juddery's*, Brothers, with several others, were the first Persons who did surrender in Obedience to that Law; and what was the Consequence? They were not tried 'tis true for the Fact; but they were loaded with civil Actions for large Debts, at the Suit of the Crown, to render it impossible for them ever to be restored to their Liberty, by procuring Bail, or otherwise, without the Aid of Parliament; and thereupon detained in *Newgate* until their Deaths, or other Destruction of themselves, and poor Families.

But these are not the only severe Circumstances attending this Law: There is one more particularly affecting, which deserves to be related.

The Case was this: A Man in good Circumstances, of a fair Character, and a large Family, having the Misfortune to be of the
same

same Name with an obscure outlaw'd *Smug-
gler*, of the same Place, who had absconded,
was taken up for him, and prosecuted ac-
cordingly.

His Commitment was attended with a
Complication of the most deplorable Cir-
cumstances. His Effects were seized; he
remained some Months in Prison, even un-
der the severe Pressure of pinching Necessity;
his Wife was with Child; his Children were
all down in the Small-Pox. At last his Trial
came on: *V*ain did People appear to his
Character! *V*ain did they attempt to prove,
it was he that had absconded that was the
Person meant in the *Gazette* and *Proclama-
tion*! All the Favour he could obtain, was
Transportation for Life.

What was the sad Consequence? Why
truly, the Husband lost his Senses, the Wife
miscarried and died, and the Children were
all sent to the Parish.

If

If this dismal Train of Woes does not bear any Analogy with the savage and inhuman Butcheries at *Chichester*, it must be allowed a melancholy Instance to what cruel Ravages the Laws may sometimes give a Sanction to.

It is such Instances as these as often tempt Men to call in Question their Authority. In fact, were the Case to be put and fairly argued, whether a Legislature can, in the natural Equity of Things, enact a Law for punishing any one with Death for purchasing Goods with his own Money, even tho' prohibited, I believe it might admit of some Doubts; nay, there seems a Presumption in Favour of the Negative, inasmuch as, even in arbitrary Countries, the Laws, I think, are not capital in the same Cases: They punish the *Smuggler* by the *Gallies*, but not by *Death*, that I ever heard of.

I cannot help observing in this Place, and I speak it with Concern, we are very apt to brand other Countries with the Exercise of arbi-

arbitrary Power, at the same Time that we act in some Instances with greater Despotism over the Subject than they do. I will mention one with regard to the Soldiery. In *France* and in *Spain*, the Soldier is not a Soldier for Life; but has a Time allowed him, at the Expiration of which he is discharged if he chuses it; or, if he does not, he has fresh enlisting Money, and a fresh Time given him, by which Means it becomes a kind of an Estate to him, the Hopes of which contributes not a little to his good Behaviour, and certainly serves to make his Hardships sit the lighter. Whereas, in this boasted Land of Liberty, once a poor thoughtless Fellow puts the King's Coin in his Pocket, he is enrolled a Slave for ever after, unless he can purchase his Redemption; and thus looking upon himself as one that is cut off from Society, is it any Wonder that he abandons himself to every Villany his Despair will suggest. If the *French* Soldier enjoys more *Freedom* under an *arbitrary* Government, than an *English* one does

in a *free Country*; so likewise are the *French Slaves* in *America* treated with greater Humanity than our's; and accordingly they fail not to shew they are sensible of the Difference; for it is observable, whenever we make a Descent on any of the *French Settlements*, we find *their Slaves* will all fight to a Man; whereas, when the *French* make a Descent upon us, *our Slaves* shew all the Dispositions to run away to a Man.

But to return to Smuggling.

Is it not amazing, that every one, however miserable, can presently tell you the Cause of Smuggling, and yet no body, however wise, has hit on an effectual Method to remove it? We have Recourse to the most violent Remedies without any Effect, and don't think proper to make Use of the most natural and obvious ones that would immediately produce it. Would it be consistent in a Physician to prefer that Remedy, the very Nature of which serves to enflame
the

the Disorder, and neglect that the very Nature of which would instantly remove it? Yet so our State-Physicians seem to have acted hitherto, with Regard to the so-long-attempted Suppression of the pernicious Practice of Smuggling. The Reason is not so difficult to be assigned, the Fallacy of which I will endeavour to shew as I go along.

Certain it is, that high Duties will eternally tempt Men, in whatever Climate they are found, to engage in an illicit Commerce, however hazardous, for the Sake of the large Profits accruing.

The grasping Nature of Man is such, he's fond of growing rich on a sudden. Those who live on our Sea-Coasts, think they can't obtain that End sooner than by Smuggling, which they carry on by their Money, and the Assistance of a great Number of People of the poorer and most ignorant Sort, whom they must necessarily again employ at ad-

vanced Wages, and who are generally the Persons that suffer in the End. Were there no Consumers, the Smuggling Trade would drop of Course : But 'tis too glaring a Truth, that Customers are very far from being wanting : Gentle and simple scruple not to take their Goods off their Hands ; nay, the fair Trader himself, who is so clamorous against their pernicious Practices *in public*, is often found to have Dealings with them *in private*. So that what is said of traiterous Discoveries, may be as aptly applied here : People detest the *Smuggler*, but have a very great Liking to the *Cheapness* of his contraband Commodity.

All the Remedies hitherto applied to remove this stubborn, this chronical Evil, have been severe Acts, Outlawries, and Dragooning. Would these violent Measures answer the End, by a total Suppression of Smuggling, 'twere well ; but, alas ! it is far otherwise ; we see no such Effect : On the contrary, as one of the chief Supports of Smuggling

gling is known to be the Farmer, the extirpating him by repeated Prosecutions must not only be greatly detrimental to Husbandry; but may likewise dispeople the Country in the long Run, besides producing other Consequences that may affect the Constitution itself. Violence will beget Violence; Rancour, Rancour; a kind of Civil War will be established: The Military Power will insensibly gain Ground: Instead of entertaining any formidable Ideas of a Standing Army, so much dreaded by our Ancestors, it will grow familiar to us, nay, be cherish'd as useful and necessary for our Protection against ourselves. And pray in the End, who will answer, that the same Arms that destroy'd *Smuggling*, may not be wickedly employed to destroy our *Liberties*?

The bare Possibility of such an alarming Consequence were sufficient methinks to induce us at least to have Recourse to a milder, and the only natural and effectual Remedy, that of lowering the Duties, so as to make
it

it not worth the *Smuggler's* While to carry on his contraband Trade.

The Reason why this Remedy has not been thought proper to be applied, can be no other, than that the Revenue would suffer too much by such a Reduction; as also the lucrative Article of *Seizures* would thereby be lost to his Majesty. Supposing this were to be the Case, surely the Loss cannot be put in any Competition with the Peace of Society, by which the Lives of so many unhappy Wretches would not only be saved, but by that Means rendered useful Members of the Community. Were a proper Representation of this made to his Majesty, I am thoroughly persuaded, from the Generosity of his Nature, that he would readily sacrifice his Interest to the Welfare of the Subject, and scorn to wish the Continuance of an Evil, merely because it's Existence brought Thousands into his own private Coffers.

But

But I am far from thinking the Revenue would suffer, whatever his Majesty might : I apprehend the Loss would be in a great Measure, if not wholly, supplied by the necessarily-encreased Consumption of the Commodity so reduced. For Instance; in the Article of Teas : If the *Smuggler* fetches them chiefly from *Holland*, as I am inform'd he does, and it is no longer worth his while to carry on that Branch of his Contraband ; if he is deprived of his Temptation of *Gain*, and the Public of all Hopes of buying *cheaper* any where else ; it follows, I think, that all that Quantity, which was run in upon us before, must of Course be an Accession of Consumption to the *India* Company, by their being thereby obliged to go to Market there only for them,

But supposing I may mistake in my Estimation, methinks it were easy for the Wisdom of Parliament, to transfer a Duty taken off from one Commodity, by laying it on another,

another, less liable to the dangerous Consequences here apprehended.

As Experience has shewn us, that there is no such Thing in Nature as preventing the excessive Use of Spirituous Liquors, but by laying a greater Duty on the Still-Head ; so I am fully convinced, there is no such Thing as preventing Smuggling, but by reducing the Duties upon the Commodities smuggled ; unless you could hope to root out that avaricious and greedy Propensity in Mankind after *exorbitant Gain*, and likewise could prevail on the World to *despise* the *Contraband* as well as the *Smuggler*.

Having now submitted my impartial and well-meaning Thoughts, with respect to the *Laws* against *Smugglers*, the *dangerous Consequences* attending them, their *Insufficiency* to the *End* proposed, with the most *natural Remedy* to be applied ; I shall think my Labour abundantly overpay'd, if the Parliament now sitting should think fit to take the
Pre-

Premises into their Consideration : At least, I will take the Liberty to conclude what has been said, with an Observation I have somewhere read, namely, that *The Business of an English Parliament is not only to be KEYS to unlock the People's POCKETS; but they are to propose new Laws that are wanting for general Good, and to press the Abrogation of Laws in Being, when the Execution of them is found prejudicial, or dangerous to the Public.*

F I N I S.

